

AMENDED IN ASSEMBLY APRIL 14, 2015

AMENDED IN ASSEMBLY MARCH 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 691**

---

**Introduced by Assembly Member Calderon  
(Coauthors: Assembly Members Chávez, Chu, Dababneh, and  
Gonzalez)**

February 25, 2015

---

An act to add Part 20 (commencing with Section 870) to Division 2 of the Probate Code, relating to estates.

### LEGISLATIVE COUNSEL'S DIGEST

AB 691, as amended, Calderon. The Privacy Expectation Afterlife and Choices Act (PEAC).

Existing law provides for the disposition of a testator's property by will. Existing law also provides for the disposition of that portion of a decedent's estate not disposed of by will. Existing law provides that the decedent's property, including property devised by a will, is generally subject to probate administration, except as specified.

This bill would establish the Privacy Expectation Afterlife and Choices Act, which would ~~require~~ *authorize* a probate court to order an electronic communication service or remote computing service provider, as defined, to disclose to the executor or administrator of the estate a record or other information pertaining to the *account of the deceased user, but not the contents of communications or stored contents.* ~~user.~~ The bill would require the probate court to make specified findings in order to require this disclosure, including that the executor or administrator demonstrates a good faith belief that ~~account records~~

~~are the information requested is relevant to resolve issues regarding fiscal assets of the estate. The bill would additionally require the court to find that the decedent expressed consent to the disclosure of the contents of communications or stored contents, as specified, in order to require the disclosure of those documents.~~ The bill would exempt the provider from disclosure if the deceased user expressed ~~a different intent through an intent to disallow disclosure by either deletion of deleting~~ the records or contents during the user's lifetime, or affirmatively indicating, through a setting within the product or service, how the user's records or the content of communications can be treated after a set period of inactivity or other ~~event and event~~. The bill would also exempt the provider from civil liability for compliance in good faith with a court order issued pursuant to this act.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Part 20 (commencing with Section 870) is added  
2 to Division 2 of the Probate Code, to read:

3  
4 PART 20. PRIVACY EXPECTATION AFTERLIFE AND  
5 CHOICES  
6

7 870. This part may be known, and may be cited, as the Privacy  
8 Expectation Afterlife and Choices Act.

9 871. (a) A probate court that has jurisdiction of the estate of  
10 the deceased user ~~shall~~ may order a provider to disclose to the  
11 executor or administrator of the estate a record or other information  
12 pertaining to the *account of the* deceased user, but not the contents  
13 of communications or stored contents, if the court makes all of the  
14 following findings of facts *based upon a sworn declaration of the*  
15 *personal representative or other admissible evidence*:

16 (1) The user is deceased.

17 (2) The deceased user was the subscriber to or customer of the  
18 provider.

19 (3) The account belonging to the deceased user has been  
20 identified with specificity, including a unique identifier assigned  
21 by the provider.

1 (4) There are no other authorized users or owners of the  
2 deceased user's account.

3 (5) Disclosure is not in violation of another applicable law.

4 (6) The request for disclosure is narrowly tailored to ~~effect~~  
5 *effectuate* the purpose of ~~the administration of administering~~ the  
6 estate.

7 (7) The executor or administrator demonstrates a good faith  
8 belief that ~~account records are~~ *the information requested is* relevant  
9 to resolve issues regarding ~~financial~~ assets of the estate.

10 (8) The request seeks information spanning no more than ~~a year~~  
11 *18 months* prior to the date of death.

12 (9) The request is not in conflict with the deceased user's will  
13 or other expression of the deceased user's intent *regarding access*  
14 *to or disposition of information contained in or regarding the*  
15 *user's account.*

16 (b) A probate court that has jurisdiction of the estate of the  
17 deceased user may order a provider to disclose to the executor or  
18 administrator of the estate the contents of communications or  
19 stored contents, if the court makes all of the following findings of  
20 facts based upon a sworn declaration of the personal representative  
21 or other admissible evidence:

22 (1) The will of the decedent, a setting within the product or  
23 service regarding how the user's contents can be treated after a  
24 set period of inactivity, or other provision or event signifies the  
25 decedent's express consent to the disclosure of the requested  
26 contents.

27 (2) The findings required by paragraphs (1) to (8), inclusive,  
28 of subdivision (a).

29 ~~(b)~~

30 (c) Except as provided in subdivision ~~(e)~~ (d), a provider shall  
31 disclose to the executor or administrator of the estate the contents  
32 of the deceased user's account, to the extent reasonably available,  
33 only if the executor or administrator gives the provider all of the  
34 following:

35 (1) A written request for the contents of the deceased user's  
36 account.

37 (2) A copy of the death certificate of the deceased user.

38 (3) An order of the probate court with jurisdiction over the estate  
39 of the deceased that includes all of the findings required in  
40 subdivision ~~(a)~~ (b).

(4) An order that the estate shall first indemnify the provider from *any and* all liability in complying with the order.

~~(e) If an order is served on a provider~~

~~(d) A provider served with an order compelling disclosure of subscriber records or contents pursuant to this section, the provider may make a motion to quash or modify the order within a reasonable time after receiving the order. The court shall grant the motion if compliance with the order would cause an undue burden on the provider or if any of the requirements of subdivision (b) are not met. do any of the following:~~

~~(1) Modify the order to the extent that the court finds that compliance with the order would cause an undue burden on the provider; or quash the order if the court finds that the order cannot be modified so as to avoid the undue burden.~~

~~(2) Quash the order if any of the applicable requirements of subdivision (a) or (b) are not met.~~

~~(3) Quash the order if the court finds, based upon evidence submitted by the provider or any other person, that any of the circumstances set forth in Section 872 apply.~~

872. A provider shall not be compelled to disclose a record or the contents of communications if any of the following apply:

(a) The deceased user expressed ~~a different intent~~ *an intent to disallow disclosure* through either deletion of the records or contents during the user's lifetime, or ~~affirmatively indicating an affirmative indication~~, through a setting within the product or service, *of how the user's records or the content of communications can be treated after a set period of inactivity or other event.*

(b) The provider is aware of any indication of lawful access to the account after the date of the deceased user's death or that the account is not that of the deceased user.

~~(c) Disclosure violates the would violate other applicable law, including, but not limited to, electronic communications privacy provisions or copyright law.~~

873. (a) Disclosure of the contents of the deceased user's account to the executor or administrator of the estate shall be subject to the same license, restrictions, terms of service, and legal obligations, including copyright law, that applied to the deceased user.

(b) Nothing in this part shall *be construed to* require a requesting party to assume control of a deceased user's account.

1 874. A provider shall not be held liable for compliance in good  
2 faith with a court order issued pursuant to this part.

3 875. As used in this part, the following definitions shall apply:

4 (a) "Contents" means information concerning the substance,  
5 purport, or meaning of communications and includes the subject  
6 line of the communication.

7 (b) "Electronic communication" means a transfer of signs,  
8 signals, writing, images, sounds, data, or intelligence of any nature  
9 that is transmitted, in whole or in part, by a wire, radio,  
10 electromagnetic, or photooptical system that affects interstate or  
11 foreign commerce. "Electronic communication" does not include  
12 any of the following:

13 (1) Wire or oral communication.

14 (2) Communication made through a tone-only paging device.

15 (3) Communication from a tracking device.

16 (4) Electronic funds transfer information stored by a financial  
17 institution in a communication system used for the electronic  
18 storage and transfer of funds.

19 (c) "Electronic communication service" means a service that  
20 provides to users the ability to send or receive wire or electronic  
21 communication.

22 (d) "Electronic communications system" means a wire, radio,  
23 electromagnetic, photooptical, or photoelectronic facility for the  
24 transmission of wire or electronic communications and any  
25 computer facilities or related electronic equipment for the electronic  
26 storage of those communications.

27 (e) "Provider" means an electronic communication service or  
28 remote computing service.

29 (f) *"Record" means a record regarding a communication sent*  
30 *or received by a subscriber or user of an electronic*  
31 *communications service or remote computing service, including,*  
32 *but not limited to, account logs that record account usage, cell-site*  
33 *data for mobile telecommunications calls, and online addresses*  
34 *of other individuals with whom the account holder has*  
35 *communicated.*

36 ~~(f)~~

37 (g) "Remote computing service" means providing computer  
38 storage or processing services to the public by means of an  
39 electronic communications system.

40 ~~(g)~~

- 1     (h) “User” means a person or entity who uses an electronic
- 2     communication service and is duly authorized by the provider to
- 3     engage in that use.